

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARC ELLIOT,

Plaintiff,

v.

HBO HOME ENTERTAINMENT CORP.
a Delaware corporation; JEHANE NOUJAIME,
an individual; KARIM AMER, an individual;
THE OTHRS, LLC, a Florida limited liability
company; THE OTHRS LICENSING CORP.,
a Florida corporation; The Square, LLC, a
New York limited liability company;
ISABELLA CONSTANTINO, an individual;
JOHN DOES 1-10.

Case No. 4:23-cv-01611-SEP

**PLAINTIFF’S RESPONSE TO DEFENDANTS’
MOTION TO DISMISS OR TRANSFER VENUE**

Defendants have filed a Motion to Dismiss or Transfer Venue alleging in support of dismissal Fed. R. Civ. P. 12(b)(2), 12(b)(3), and 12(b)(6). The Defendants have cited to each of the Rules requiring a violation of each by use of the conjunctive “and.” Defendants’ Motion to Dismiss or Transfer Venue (“Motion”) at 1. Defendants attempt to make this suit about NXIVM and its convicted leader Keith Raniere. It is not. This case is about the unlawful use of plaintiff’s voice and name in an episode of *The Vow* which predates the arrest of Raniere and certainly predates the date of the execution of the consent form plaintiff signed in July 2020. Nothing more and nothing less.

I. Personal Jurisdiction

Defendants allege that HBO Home Entertainment Corp. is the wrong legal entity to be named as a defendant in this suit, claiming Home Box Office, Inc. (“HBO”) is the proper entity. Defendants further claim that HBO is not within the personal jurisdiction of this Court. HBO Home Entertainment is a directly managed subsidiary of HBO. See Ex. A (Securities and Exchange Commission Filing Exhibit 21 dated December 31, 2017.) HBO Home Entertainment is registered as a foreign corporation authorized to do business in Missouri. See Ex. B (2023 Missouri Annual Registration Report).

HBO Home Entertainment’s managed subsidiary status of HBO is sufficient to invoke the personal jurisdiction of this Court. HBO’s Securities and Exchange Commission 10-Q filing dated April 26, 2018, states in pertinent part “**Home Box Office**. The Home Box Office segment consists of businesses managed by Home Box Office, Inc. (“Home Box Office”)” (emphasis in original) (available at [https://www.sec.gov/Archives/edgar/data/1105705/000119312518134094/d585869d10q.htm#:~:text=Home%20Box%20Office,Operating%20Income%20of%20%24516%20million;last visited Feb. 9, 2021](https://www.sec.gov/Archives/edgar/data/1105705/000119312518134094/d585869d10q.htm#:~:text=Home%20Box%20Office,Operating%20Income%20of%20%24516%20million;last%20visited%20Feb.%209,%202021))

Defendants who are engaged in a co-venture, as the defendants are here, are subject to the personal jurisdiction of this Court when one of the co-venturing defendants is found to be subject to personal jurisdiction. The allegation of a civil conspiracy amongst the defendants strengthens the argument for this Court to exercise such personal jurisdiction. See *In re Genetically Modified Rice Litigation*, 576 F. Supp. 2d 1063, 1073-1076 (E.D. Mo. 2008). This Court should exercise personal jurisdiction over each of the defendants.

II. Failure to State a Claim

Defendants allege that plaintiff has failed to state a claim upon which relief can be granted. When deciding a motion to dismiss under Rule 12(b)(6), the Court must assume that all material facts alleged in the complaint are true. See *American Cleaners Laun. v. Textile Processors*, 482 F. Supp. 2d 1103, 1110 (E.D. Mo. 2007) (The court must view all facts and inferences in the light most favorable to the non-moving party and "may dismiss the complaint only if it is clear that no relief can be granted under any set of facts that could be proved consistent with the complaint." *McMorrow v. Little*, 109 F.3d 432, 434 (8th Cir. 1997); *Stone Motor Co. v. Gen. Motors Corp.*, 293 F.3d 456, 464 (8th Cir. 2002). Thus, as a practical matter, a dismissal under Rule 12(b)(6) should be granted "only in the unusual case in which a plaintiff includes allegations that show, on the face of the complaint, that there is some insuperable bar to relief." *Strand v. Diversified Collection Serv., Inc.*, 380 F.3d 316, 317 (8th Cir. 2004). The issue on a motion to dismiss is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to present evidence in support of his or her claim. *Schuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

Plaintiff has sufficiently alleged facts which if true state a cause of action for which relief must be granted. Those facts in a nutshell are 1) Plaintiff's voice and name were used in an episode of *The Vow* broadcast by HBO and produced by the other defendants to the public on a subscription only platform; 2) Plaintiff's phone call in question pre-dated the consent and waiver he signed in July 2020; and 3) the phone call was private and occurred at a time prior to the arrest of Raniere and any criminal trial. Plaintiff had no knowledge of this phone call when he signed the consent and waiver in July 2020. Had the waiver been effective for all time, there would have been no start date listed, but an all-encompassing phrase such as "from the beginning

of time.” The Plaintiff was not in a public place and could not be overheard by any third party, much less expect his private conversation to be broadcast to millions of HBO subscribers without his knowledge and consent. This is evidenced by the fact the defendants sought a waiver of the very acts complained of prior to the effective date of the waiver. Without such a waiver defendants would not have aired any content involving plaintiff. Plaintiff notes this only because defendants have argued this in their Motion. These facts are clearly contested by the parties and are not subject to a motion to dismiss, or even summary judgment, but to a trial by the finder of fact.

III. Consent and Waiver to New York Jurisdiction

Defendants argue that the consent and waiver set the courts of New York as the proper venue for any legal action arising out of the production and airing of *The Vow*. However, because the consent and waiver did not encompass the complained of action occurring before the July 11, 2020 effective date, it is not binding on jurisdiction of this action, as such the Eastern District of Missouri is the proper forum.

IV. Failure to Perfect Service

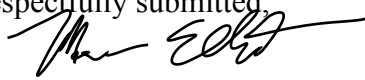
Defendant Noujaim alleges in her Declaration that she was not properly served in this action. See Declaration of Jehane Noujaim at ¶ 3. The Motion to Dismiss sets forth no claim related to failure to perfect service, therefore such claim is deemed waived. See *Hammer & Steel, Inc. v. Mienergy, Inc.*, 4:23-cv-01343-SRC (E.D. Mo. Nov. 30, 2023) at 4-5. As such Defendant Noujaim has waived service and is within the jurisdiction of this Court.

V. Conclusion

For the reasons set forth above Plaintiff respectfully requests this Court to deny Defendants' Motion to Dismiss or Transfer Venue in its entirety, exercise personal jurisdiction over each of the named defendants, and set the matter for a scheduling conference.

DATED this 9th day of February 2024.

Respectfully submitted,



Marc Elliot
Defendant, *pro se*
5655 Pershing Ave, Apt 529
St. Louis, MO 63112
marc@marcelliot.com
314-252-0579

CERTIFICATE OF SERVICE

Defendant has provided a copy of this Response by filing with the Clerk of this Court and the subsequent service by email through the Court's electronic Case Management/Electronic Filing System.

DATED this 9th day of February 2024.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marc Elliot', is written above a horizontal line.

Marc Elliot
Defendant, *pro se*

EXHIBIT A

SUBSIDIARIES OF TIME WARNER INC.

Time Warner Inc. ("Time Warner") maintains approximately 900 subsidiaries. Set forth below are the names of certain controlled subsidiaries, at least 50% owned, directly or indirectly, of Time Warner as of December 31, 2017, that carry on a substantial portion of Time Warner's lines of business. The names of various consolidated wholly owned subsidiaries have been omitted. The omitted subsidiaries, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of December 31, 2017.

Name	State or Other Jurisdiction of Incorporation
Time Warner Inc. (Registrant)	Delaware
Historic AOL LLC	Delaware
Historic TW Inc.	Delaware
Turner Broadcasting System, Inc.	Georgia
Bleacher Report, Inc.	Delaware
Cable News Network, Inc.	Delaware
Cable News International, Inc.	Delaware
CNN America, Inc.	Delaware
CNN Interactive Group, Inc.	Delaware
Great Big Story, LLC	Georgia
CNN Newsource Sales, Inc.	Georgia
Imagen Satelital S.A.	Argentina
iStreamPlanet Co., LLC	Delaware
Turner Broadcasting Sales, Inc. (dba The Turner Network)	Georgia
Turner International, Inc.	Georgia
Turner International Latin America, Inc.	Georgia
CNN Chile Canal De Television Limitada	Chile
Red de Television Chilevision S.A.	Chile
TopSports Ventures Ltda.	Brazil
Turner Entertainment Networks, Inc.	Georgia
Courtroom Television Network LLC (dba truTV)	New York
Superstation, Inc.	Georgia
Super Deluxe, LLC	California
TEN Network Holding, Inc.	Delaware
The Cartoon Network, Inc.	Delaware
Boomerang Plus, LLC	Georgia
Turner Classic Movies, Inc.	Delaware
TCM Interactive Group, Inc. (dba FilmStruck)	Delaware
Turner Network Television, Inc.	Delaware
Turner Broadcasting System Asia Pacific, Inc.	Georgia
Turner International India Private Ltd.	India
Turner Network Sales, Inc. (dba Turner Content Distribution)	Georgia
Turner Sports, Inc.	Georgia
TW Interactive Media Holdings Inc.	Delaware
Warner Communications LLC	Delaware
DC Comics (partnership)	New York
E.C. Publications, Inc.	New York
Home Box Office, Inc.	Delaware
HBO Digital Services, Inc.	Delaware
HBO Europe Holdings, Inc.	Delaware
HBO Home Entertainment, Inc.	Delaware

HBO Latin America Holdings LLC	Delaware
HBO Pacific Partners V.O.F.	Curaçao
HBO Service Corporation	Delaware
TW UK Holdings Inc.	Delaware
Time Warner Limited	United Kingdom
Time Warner Entertainment Limited	United Kingdom
Rocksteady Studios Limited	United Kingdom
Warner Bros. Studios Leavesden Limited	United Kingdom
TT Games Limited	United Kingdom
Turner Entertainment Networks International Limited	United Kingdom
Turner Broadcasting System Europe Limited	United Kingdom
EDA Televizyon Yayincilik ve Produksiyon AS	Turkey
TBS Istanbul Yayincilik ve Produksiyon AS	Turkey
Turner Broadcasting System Deutschland GmbH	Germany
Turner Nordic & Baltic AB	Sweden
Turner Broadcasting System Italia Srl	Italy
Turner Broadcasting System France SAS	France
Warner Bros. International Television Production Limited	United Kingdom
Warner Bros. Television Production UK Limited	United Kingdom
TW Ventures Inc.	Delaware
Blue Ribbon Content Inc.	Delaware
Castle Rock Entertainment	California
Stage 13 Inc.	California
Warner Bros. (F.E.), Inc.	Delaware
Warner Bros. (South), Inc.	Delaware
Warner Bros. Entertainment Inc.	Delaware
Burbank Television Enterprises LLC	Delaware
Alloy Media Holdings, L.L.C.	Delaware
Alloy Entertainment, LLC	Delaware
Shed Media US Inc.	Delaware
Telepictures Productions Inc.	Delaware
Warner Bros. International Television Distribution Inc.	Delaware
Warner Bros. Worldwide Television Distribution Inc.	Delaware
Warner Horizon Television Inc.	Delaware
WBTB Distribution Inc.	Delaware
Ellen Digital Ventures	California
Flixster, Inc.	Delaware
Hanna-Barbera Productions, Inc.	Delaware
New Line Cinema LLC	Delaware
New Line Distribution, Inc.	California
New Line Productions, Inc.	California
New Line Theatricals, Inc.	New York
Time Warner (Barbados) Holdings SRL	Barbados
Time Warner (Barbados) Licensing SRL	Barbados
Warner Bros. Entertainment Nederland B.V.	Netherlands
Warner Bros. Entertainment España S.L.U.	Spain
Warner Bros. Entertainment France S.A.S.	France
Warner Bros. Entertainment GmbH	Germany
Warner Bros. Entertainment Italia S.R.L.	Italy
Warner Bros. Entertainment Switzerland GmbH	Switzerland
Warner Bros. Entertainment UK Limited	United Kingdom
Warner Bros. International Television Production Holding B.V.	Netherlands
Eyeworks Scandinavia A.B.	Sweden

Warner Bros. International Television Production België BVBA	Belgium
Warner Bros. International Television Production España, S.L.	Spain
Warner Bros. International Television Production New Zealand Limited (formerly Warner Bros. International Television Production Operations New Zealand Limited and Eyeworks New Zealand Limited)	New Zealand
Warner Bros. International Television Production Australia Pty Ltd	Australia
Warner Bros. International Television Production Holding Deutschland GmbH	Germany
Warner Bros. International Television Production Holding Nederland B.V.	Netherlands
Warner Bros. Japan LLC	Japan
Turner Entertainment Co.	Delaware
Warner Bros. Animation Inc.	Delaware
Warner Bros. Consumer Products Inc.	Delaware
Warner Bros. Enterprises LLC	Delaware
Warner Bros. Distributing Inc.	Delaware
Warner Bros. Technical Operations Inc.	Delaware
Warner Specialty Films Inc.	Delaware
WB Studio Enterprises Inc.	Delaware
Warner Bros. Entertainment Australia Pty Limited	Australia
Warner Bros. Entertainment Canada Inc.	Canada
Warner Bros. Home Entertainment Inc.	Delaware
WB Games Inc.	Washington
Turbine, Inc.	Delaware
WB Games Montreal Inc.	Canada
Warner Bros. (Korea) Inc.	Korea
Warner Bros. Master Distributor Inc.	Delaware
Warner Bros. Digital Networks Inc.	Delaware
Machinima, Inc.	Delaware
Warner Bros. Digital Networks Labs Inc. (formerly DramaFever Corp.)	Delaware
WB Communications Inc.	Delaware
Boomerang Plus, LLC	Georgia
Time Warner Enterprise Infrastructure Services LLC	Delaware
Time Warner International Finance Limited	United Kingdom
Time Warner Realty Inc.	Delaware
TW AOL Holdings LLC	Virginia
Turner Japan K.K.	Japan
Time Warner Media Holdings B.V.	Netherlands
TW NY Properties LLC	Delaware



EXHIBIT B

John R. Ashcroft Secretary of State
2023 ANNUAL REGISTRATION REPORT

BUSINESS

F001324009
Date Filed: 4/13/2023
John R. Ashcroft
Missouri Secretary of State

*
SECTION 1, 3 & 4 ARE REQUIRED

REPORT DUE BY: <u>4/30/2023</u>	RENEWAL MONTH: JANUARY
F001324009 HBO Home Entertainment, Inc. C T CORPORATION SYSTEM 120 SOUTH CENTRAL AVE CLAYTON MO 63105	<input type="checkbox"/> I OPT TO CHANGE THE CORPORATION'S RENEWAL MONTH TO FOR A \$25.00 FEE
1	PRINCIPAL PLACE OF BUSINESS OR CORPORATE HEADQUARTERS: * 30 Hudson Yards (Required) STREET New York NY 10001-2170 CITY / STATE ZIP

2	If changing the registered agent and/or registered office address, please check the appropriate box(es) and fill in the necessary information. <input type="checkbox"/> The new registered agent _____ IF CHANGING THE REGISTERED AGENT, AN ORIGINAL WRITTEN CONSENT FROM THE NEW REGISTERED AGENT MUST BE ATTACHED AND FILED WITH THIS REGISTRATION REPORT. <input type="checkbox"/> The new registered office address _____ Must be a Missouri address, PO Box alone is not acceptable. This section is not applicable for Banks, Trusts and Foreign Insurance.
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3	OFFICERS NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). <u>MUST LIST PRESIDENT AND SECRETARY BELOW</u>	A	BOARD OF DIRECTORS NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). <u>MUST LIST AT LEAST ONE DIRECTOR BELOW</u>	B
	<u>PRESIDENT</u> Davis, Todd Francis STREET 30 Hudson Yards CITY/STATE/ZIP New York NY 10001-2170 <u>SECRETARY</u> Smith, Tara L. STREET 30 Hudson Yards CITY/STATE/ZIP New York NY 10001-2170 <u>TREASURER</u> Wiedenfels, Gunnar STREET 30 Hudson Yards CITY/STATE/ZIP New York NY 10001-2170 <u>TREASURER</u> Woodford, Fraser Martin STREET 30 Hudson Yards CITY/STATE/ZIP New York NY 10001-2170		<u>NAME</u> Davis, Todd Francis STREET 30 Hudson Yards CITY/STATE/ZIP New York NY 10001-2170 USA <u>NAME</u> Woodford, Fraser Martin STREET 30 Hudson Yards CITY/STATE/ZIP New York NY 10001-2170 USA <u>NAME</u> _____ STREET _____ CITY/STATE/ZIP _____	
	NAMES AND ADDRESSES OF ALL OTHER OFFICERS AND DIRECTORS ARE ATTACHED			

4	The undersigned understands that false statements made in this report are punishable for the crime of making a false declaration under Section 575.060 RSMo. Photocopy or stamped signature not acceptable.	*
	Authorized party or officer sign here <u>Brooke Kerperien</u> (Required)	
	Please print name and title of signer: <u>Brooke Kerperien</u> / <u>Other</u> NAME TITLE	

REGISTRATION REPORT FEE IS: ___\$20.00 If filed on or before 4/30/2023 ___\$35.00 If filed on or before 5/31/2023 ___\$50.00 If filed on or before 6/30/2023 ___\$65.00 If filed on or before 7/31/2023 ADD AN ADDITIONAL \$25.00 FEE IF CHANGING THE RENEWAL MONTH.	WHEN THIS FORM IS ACCEPTED BY THE SECRETARY OF STATE, BY LAW IT WILL BECOME A PUBLIC DOCUMENT AND ALL INFORMATION PROVIDED IS SUBJECT TO PUBLIC DISCLOSURE E-MAIL ADDRESS (OPTIONAL): _____
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REQUIRED INFORMATION MUST BE COMPLETE OR THE REGISTRATION REPORT WILL BE REJECTED
 RETURN COMPLETED REGISTRATION REPORT AND PAYMENT TO: Secretary of State, P.O. Box 778, Jefferson City, MO 65102